U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: Nebraska Service Center Date: AUG 29 2000

IN RE: Applicant: [redacted]

APPLICATION: Application for Travel Document Pursuant to Section 223 of the Immigration and Nationality Act, 8 U.S.C. 1203

IN BEHALF OF PETITIONER: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

Terrance M. O'Reilly, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The applicant is a native and citizen of India who is seeking to obtain a reentry permit pursuant to section 223 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1203.

The director denied the application after determining that the applicant was not in the United States at the time the application was filed.

On appeal, the applicant states that her application was filed before she departed from the United States. However, because she erroneously wrote the foreign address where she would be while taking care of her aging parents, the application was returned to her on March 29, 1999 requesting that Part 1 be corrected to show a U.S. address. The applicant states that her application should have been accepted when first submitted, which was before she left the United States, and then if anything is needed to be corrected, it should have been returned.

In pertinent part, section 223 of the Act provides that an alien lawfully admitted for permanent residence who intends to visit abroad and return to the United States to resume that status may make an application for a permit to reenter the United States.

With certain exceptions[1], regulations at 8 C.F.R. 223.2(b) allow for the approval of a reentry permit if the application (Form I-131) is filed by a lawful permanent resident or conditional permanent resident. Additionally, regulations at 8 C.F.R. 223.2(b) require that the application be filed with the Service prior to departure from the United States.

8 C.F.R. 103.2(a)(7)(i) states, in pertinent part:

> An application or petition received in a Service office shall be stamped to show the time and date of actual receipt and....shall be regarded as properly filed when so stamped, if it is properly signed and executed and the required filing fee is attached or a waiver of the filing fee is granted. An application or petition which is not

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[1]See 8 C.F.R. 223.2(c) providing ineligibility where (1) a prior reentry permit is still valid, (2) certain extended absences have been taken by the applicant, or (3) the applicant is entitled to nonimmigrant diplomatic or treaty status and has not submitted the applicable waiver and/or tax exemption form.

> properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. Rejected applications and petitions, and ones in which the check or other financial instrument used to pay the filing fee is subsequently returned as nonpayable will not retain a filing date....

The record reflects that the application and the required fee were mailed to the Service on March 11, 1999. The applicant departed from the United States on March 15, 1999. She claims that on March 29, 1999, the Form I-131 application was returned to her by the director for correction. She states that she returned the application after correction and that it was subsequently received by the Service on April 12, 1999.

The director, therefore, denied the application after determining that the applicant was not in the United States at the time the application was filed on April 12, 1999.

On appeal, the applicant claims that her application was filed before she departed from the United States.

Regulations at 8 C.F.R. 103.2(a)(7)(i) requires that an application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. The record reflects that the application was date stamped when it was originally received by the Service. It is noted that the date of original receipt was "whited out." Although the application was properly signed and the required filing fee was attached, the director rejected and returned the application on March 29, 1999. This action of the director, however, is inconsistent with 8 C.F.R. 103.2(a)(7)(i). The application should have been regarded as properly filed on the date it was originally received. The director could then have requested further evidence in accordance with 8 C.F.R. 103.2(b)(8). This regulation states, in pertinent part:

> If there is evidence of ineligibility in the record, an application or petition shall be denied on that basis notwithstanding any lack of required initial evidence. If the application or petition was pre-screened by the Service prior to filing and was filed even though the applicant or petitioner was informed that the required initial evidence was missing, the application or petition shall be denied for failure to contain the necessary evidence. Except as otherwise provided in this chapter, in other instances where there is no evidence of ineligibility, and initial evidence or eligibility information is missing or the Service finds that the

[redacted]

> evidence submitted either does not fully establish eligibility for the requested benefit or raises underlying questions regarding eligibility, the Service shall request the missing initial evidence, and may request additional evidence....

While the original date of receipt of the application was obliterated, it is reasonable to assume that the application was received by the Service prior to the applicant's departure from the United States.

Accordingly, it is concluded that the applicant was in the United States at the time the application for a permit to reenter the United States was filed with the Service. Therefore, the director's decision will be withdrawn and application will be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has met that burden. The appeal will be sustained.

ORDER: The appeal is sustained.